

TENTATIVE RULINGS for CIVIL LAW and MOTION

May 21, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **The Humane Society of the United States v. The Regents of the University of California, et al.**
 Case No. CV PT 08-2337

Hearing Date: **May 21, 2010** **Department Fifteen** **9:00 a.m.**

Humane Society of the United States (“HSUS”) moves to compel the Regents of the University of California (“the Regents”) to produce unredacted copies of the documents the Regents had produced in 2008, pursuant to HSUS’ California Public Record Act (“CPRA”) requests. The Regents contend that the information that has been redacted from the documents at issue are exempt from disclosure under Government Code sections 6254, subdivisions (c) and (k) and 6255. HSUS disclaims any interest in obtaining the personal information, i.e., the home address, personal cell phone number and email address, of individuals.

Unless one of the exemptions stated in the CPRA applies, the public is entitled to access to a “public record.” (Govt. Code, § 6253, subd. (b); *Int’l Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court of Alameda County* (2007) 42 Cal.4th 319, 329.) The burden of justifying non-disclosure lies with the state or local agency resisting a CPRA request. (*Ibid.*; Govt. Code, § 6255, subd. (a).)

The Court has reviewed *in camera* unredacted copies of the documents at issue and reviewed the redactions at issue, the rationale for the redactions, the parties’ contentions, the file in this case, and the authorities cited. The Court finds that the Regents failed to demonstrate that any of the redactions at issue are exempt from disclosure under Government Code section 6254, subdivisions (c) and (k).

HSUS’ motion is **GRANTED** as to the documents Bates-stamped HSUS122-HSUS123, HSUS300-HSUS301, HSUS304-HSUS306, HSUS308-HSUS310 (except for the redaction in the first paragraph of the July 22, 2008, email to Dr. Mench from Ms. de Grassi on HSUS309 and HSUS310), HSUS311 (except for the personal email addresses for Mr. Chase and Mr. Bell), HSUS313-HSUS314 (except for Mr. Larkin’s cell phone number on HSUS314), HSUS315 (except for the personal email addresses for Mr. Chase and Mr. Bell), HSUS316-HSUS317 (except for Ms. Hutton’s cell phone number on HSUS317), HSUS318-HSUS321,

HSUS324-HSUS329 (except for Ms. Frederick's personal email address and cell phone number on HSUS325 and Ms. Tweed's personal email address and telephone number on HSUS326-HSUS329), HSUS330-HSUS331 (except for Ms. Reimers' personal email address, cell phone number and address), HSUS332-HSUS333, and HSUS339 (except for Ms. Kirk's personal email address, the redacted text in the first paragraph of the email on HSUS339 and Dr. Swanson's cell phone number on HSUS339). The Regents failed to establish that the redacted information that is ordered to be disclosed falls within an exemption to the CPRA.

HSUS' motion as to the documents Bates-stamped HSUS024-HSUS030, HSUS051 and HSUS066 is **DENIED**. (Govt. Code, § 6255.) Society has a strong interest in encouraging research and scholarship. Protecting the confidentiality of researchers' contacts and sources of information is critical to the mission of the UC Davis Agricultural Issues Center. (Sumner Declaration filed on October 17, 2008, ¶¶ 1-2, 4, 6-8, 10-11, 17, and 19; Sumner Declaration filed on November 24, 2008, ¶¶ 4-5 and 7; Sumner Declaration filed on December 1, 2008, ¶¶ 30, 33, and 35.) The Court finds that where the public record sought threatens the research process, the public interest in protecting such process clearly outweighs the public interest served by disclosure, except where the public record shows improper influence. The information redacted from the documents Bates-stamped HSUS024-HSUS030, HSUS051 and HSUS066 relates to the important public interest in protecting the confidentiality of contacts critical to the work of researchers and scholars and does not show improper influence.

HSUS' motion as to the document Bates-stamped HSUS340 is **DENIED**. Purely personal information is not subject to a CPRA request. (Govt. Code, § 6252, subd. (e); *Cal. State Univ. v. Superior Court of Fresno County* (2001) 90 Cal.App.4th 810, 824-825.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Liberty Insurance Corp. v. Spraytech, Inc.**
Case No. CV PO 07-394

Hearing Date: **May 21, 2010** **Department Fifteen** **9:00 a.m.**

King Associates, Ltd.'s unopposed motion for leave to conduct a mental and neurological examination of plaintiff Librado Aceves is **DENIED WITHOUT PREJUDICE**. Although the Court finds that good cause exists for the examination requested, King Associates, Ltd.'s motion failed to specify the time and place for the examination, as required under Code of Civil Procedure section 2032.310, subdivision (b). King Associates, Ltd. may request a hearing to provide the required information. If King Associates, Ltd. does not request a hearing or provide the required information at the hearing, the motion will be denied.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Sacramento Floormasters, Inc. v. Hawkins**
Case No. CV CV 09-1191

Hearing Date: **May 21, 2010** **Department Fifteen** **9:00 a.m.**

Cross-defendants' motion for summary adjudication of the second cause of action is **GRANTED**. (Code Civ. Proc., §437c, subd. (p)(2); Lab. Code §1050; Cross-Defendants' Separate Statement of Undisputed Material Facts 1, 2, 8, 9, 10 & 11; Plaintiffs' Additional Material Facts P1-P4.) To establish a cause of action for violation of Labor Code section 1050, plaintiff must show that after his employment ended, his former employer made a misrepresentation to a "prospective employer." (CACI 2711; *Kelly v. General Telephone Company* (1982) 136 Cal.App.3d 278, 288.) Cross-defendants have shown that they did not make any misrepresentations to a prospective employer of Cross-complainant. Cross-complainant fails to show that a triable issue of material fact exists.

Cross-defendants' motion for summary adjudication of the third, fourth, fifth and sixth causes of action is **GRANTED**. (Code Civ. Proc., §437c, subd. (p)(2); Corp. Code, § 309; *Carma Developers (Cal.) Inc. v. Marathon Dev. Calif. Inc.* (1992) 2 Cal.4th 342; *Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627; *Mears v. Crocker First National Bank* (1948) 84 Cal.App.2d 637; Cross-Defendants' Separate Statement of Undisputed Material Facts 1-8 & 13-17; Plaintiffs' Additional Material Facts P1-P4.) The June 12, 2008, agreement shows that Cross-defendants have the right, but not the obligation, to purchase the shares that Cross-complainant possesses. Cross-defendants have shown that they chose not to purchase the shares under the written agreement. Thus, Cross-defendants have shown that they did not breach the contract, they did not breach the covenant of good faith and fair dealing, they did not breach their fiduciary duties to Cross-complainant as a minority shareholder and that they did not convert Cross-complainant's shares of stock when they failed to purchase cross-complainant's shares of stock. Cross-complainant fails to submit evidence showing that Cross-defendants gave Cross-complainant written notice of their intent to exercise the "first right of refusal" as required under the contract. Cross-complainant also fails to show that he was harmed by Cross-defendants' actions, i.e. that Cross-defendants denied him the benefit of the contract by precluding him from selling his stock to a third party or that Cross-defendants' actions have diminished the value of his stock. Thus, Cross-complainant fails to show that a triable issue of material fact exists as to the causes of action.

Cross-defendants' motion for summary adjudication of the seventh cause of action is **GRANTED**. (Code Civ. Proc., § 437c, subd. (p)(2); Separate Statement of Undisputed Material Facts 1-8 & 13-17; Plaintiffs' Additional Material Facts P1-P4.) The elements are: "(1) [a]n economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." (CACI 2002 (Feb. 2010); *Youst v. Longo* (1987) 43 Cal.3d 64, 71.) Cross-complainant failed to establish that he had an economic relationship with some third

party with the probability of future economic benefit, that there was a disruption of the relationship, and that he was economically harmed by conduct by Cross-defendants.

Cross-defendants' objections to evidence numbers 3, 7, and 11 are **SUSTAINED**. All other objections are **OVERRULED**. (Evid. Code, §§ 350, 352, 702 & 1220.)

If no hearing is requested, plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.